

44830

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of)

ALBANI BRYGGERIERNE A/S)
(Albani Bryggeri, Bryggeriet Odense og)
Slotsbryggeriet))

Serial No. 75/833,844)

Filed: October 28, 1999)

Service Mark: MALTEX)

Published: October 22, 2002)

Official Gazette)

At page TM 586)

Opposition No. _____

COMPLEMENTOS ALIMENTICIOS,)
S.A. DE C.V.)

Opposer,)

v.)

ALBANI BRYGGERIERNE A/S)
(Albani Bryggeri, Bryggeriet Odense og)
Slotsbryggeriet))

Applicant.)

03/05/2003 NWILSON 00000134 75833844)

01 FC:6402)

300.00 OP)

NOTICE OF OPPOSITION

Complementos Alimenticios, S.A. de C.V., a Mexican corporation, located and doing
business at Calzada de la Naranja No. 157, Fracc. Ind. Alce Blanco, Naucalpan de Juarez, edo. De
Mexico, Mexico (hereinafter "Opposer"), believes that it is and/or will be damaged by registration

of the mark MALTEX shown in United States Service Mark Application Serial No. 75/833,844 of Applicant, Albani Bryggerierne A/S (Albani Bryggeri, Bryggeriet Odense og Slotsbryggeriet), (hereinafter "Applicant") published for opposition in the Official Gazette of October 22, 2002, with the date for opposition being extended until February 19, 2002, upon requests by Opposer filed November 20, 2002 and January 21, 2003, and hereby opposes the same.

The grounds for opposition are as follows:

1. Applicant seeks to register MALTEX for "non-alcoholic malt beverage" International Class 32, as described in Application Serial No. 75/833,844.
2. Opposer has used the designation MALTEX in the United States as a trademark in connection with malt extract, since at least as early as July 31, 1997.
3. Since long prior to October 28, 1999, the filing date of Applicant's Trade Mark Application Serial No. 75/833,844, Opposer has used the designation MALTEX in the United States as a trademark in connection with malt extract, and that designation has functioned and now functions as a highly distinctive trademark identifying the origin of such goods in Opposer.
4. Opposer is the owner of United States Trademark Registration No. 2,251,020, issued June 8, 1999, covering the designation MALTEX, which is valid and subsisting. A copy of the said registration is attached hereto as Exhibit A. Opposer's registration alleges a date of first use of December 1978 and a date of first use in commerce of July 31, 1997.
5. Applicant is not now and never was entitled to appropriate, use, apply for, or register as a trademark the designation MALTEX for the goods set forth in Application Serial No. 75/833,844.
6. Upon information and belief, Applicant has not used the designation MALTEX prior to October 28, 1999, which is the filing date of Application Serial No. 75/833,844.

7. Applicant was not entitled to exclusive use as a trademark of the designation MALTEX on the date it filed its application for registration of the said designation, namely, October 28, 1999, or on the date of publication of said application, namely, October 22, 2002.

8. Applicant's goods identified in its application are identical and/or so closely related to Opposer's goods that it is likely such goods will be offered for sale and sold to the same classes of purchasers through the same channels of trade as Opposer's goods.

9. The term MALTEX is identical to Opposer's mark MALTEX and is likely when applied to Applicant's goods to cause confusion or mistake or to deceive.

10. Opposer is and/or will be damaged by the use and registration of MALTEX by Applicant because Applicant's mark MALTEX when applied to the goods of Applicant, so nearly resembles Opposer's prior trademark MALTEX, as to be likely to cause confusion, mistake and deception in the trade and the public as to the identity of the goods to which said mark is applied to the consequent injury of Opposer and the public.

11. Opposer is and/or will be damaged by use and registration of MALTEX by Applicant for Applicant's goods because potential customers, purchasers, persons in the trade, the public, and Opposer's and Applicant's own customers will mistakenly assume that such goods sold under Applicant's mark are associated with, endorsed by or in some other way related to, affiliated with, or sponsored by Opposer to the detriment of Opposer.

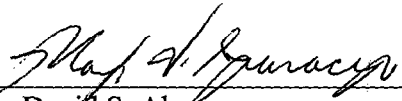
12. Registration of Applicant's mark MALTEX is specifically barred by the provisions of Section 2(d) of the Trademark Act of 1946 because said mark consists of or comprises a mark which so resembles a mark previously used in the United States by Opposer and not abandoned, as to be likely, when applied to the Applicant's goods to cause confusion, mistake, or deception.

WHEREFORE, Opposer respectfully prays that Application Serial No. 75/833,844 for MALTEX be rejected and disallowed, that this Opposition be sustained, and that registration of such trademark be refused.

This Notice of Opposition is submitted in duplicate, together with a check for the statutory filing fee of \$300.00.

Respectfully submitted,

COMPLEMENTOS ALIMENTICIOS,
S.A. DE C.V.

By: 
David S. Abrams
Mark V. Sparacino
Attorneys for Opposer

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036
(202) 659-9076

Dated: 2/19/03

Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

Reg. No. 2,251,020

United States Patent and Trademark Office

Registered June 8, 1999

**TRADEMARK
PRINCIPAL REGISTER**

MALTEX

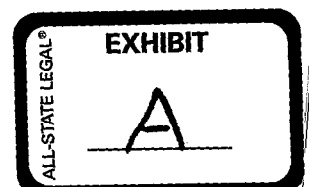
COMPLEMENTOS ALIMENTICIOS, S.A. DE
C.V. (MEXICO CORPORATION)
CALZADA DE LA NARANJA NO. 157
FRACC. IND. ALCE BLANCO, NAUCALPAN
DE JUAREZ
EDO. DE MEXICO, MEXICO

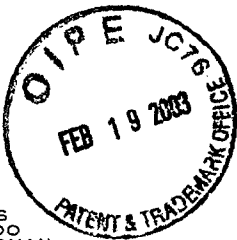
FIRST USE 12-0-1978; IN COMMERCE
7-31-1997.

SER. NO. 75-372,109, FILED 10-14-1997.

FOR: MALT EXTRACT SOLD WHOLESALE
FOR BREWING, IN CLASS 31 (U.S. CLS. 1 AND
46).

KELLY L. WILLIAMS, EXAMINING ATTOR-
NEY





TTAB

LAW OFFICES

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.

1300 19TH STREET, N. W., SUITE 600

WASHINGTON, D. C. 20036

(202) 659-9076

February 19, 2003

02-19-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

INTELLECTUAL PROPERTY ATTORNEYS

FRANK E. ROBBINS (RETIRED)

D. C. ROYLANCE (1920-1995)

FACSIMILE:

(202) 659-9344

DIRECT E-MAIL:

dabrams@roylance.com

PLEASE REFER TO FILE:

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DAVID S. ABRAMS
ROBERT H. BERDO
ALFRED N. GOODMAN
MARK S. BICKS
RICHARD A. FLYNT
JOHN E. HOLMES
MICHAEL T. MURPHY
LANCE G. JOHNSON
DEAN H. NAKAMURA, Ph.D.
STACEY J. LONGANECKER
JOSEPH J. BUCZYNSKI
GARRETT V. DAVIS
ANTIGONE E. JUVELIS*
TARA LASTER HOFFMAN*
JEFFREY J. HOWELL*
MARCUS R. MICKNEY*
CHRISTIAN C. MICHEL*
MARK V. SPARACINO*
MARK W. HROZENCHIK
PETER L. KENDALL
RONALD S. GRUBB, JR.

*ADMITTED TO BAR OTHER THAN D.C. PRACTICE
LIMITED TO MATTERS AND PROCEEDINGS
BEFORE FEDERAL COURTS AND AGENCIES

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, Virginia 22202-3513

Attention: Trademark Trial and Appeal Board

Sir:

We enclose herewith an original and a copy of a notice of opposition by Complementos Alimenticios, S.A. de C.V. against Albani Bryggerierne A/S (Albani Bryggeri, Odense og Slotsbryggeriet), regarding the following trademark application:

In re Application of : Albani Bryggerierne A/S (Albani Bryggeri, Odense og Slotsbryggeriet)

Serial No. : 75/833,844

Filed : October 28, 1999

Service Mark : MALTEX

Published : October 22, 2002

Also enclosed is the statutory filing fee of \$300.00. If the filing fee submitted herewith is insufficient or excessive, or if any other fee is required, please charge or credit our deposit account number 18-2220 as appropriate.

Respectfully submitted,

David S. Abrams

Mark V. Sparacino

Attorneys for Opposer

DSA/MVS:gka

Encs.

oc